28

HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No.41/2007

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant
Plaintiff No. 1

Smt. Hembai Wd/o Sevak Ram, Aged about 44 years, R/o Golai Dafai North Jharkhand, P.S. & Tehsil-Manendragarh, Dist. Korea (CG)

Versus

Respondents
Defendants

1. South Eastern Coalfield Limited Through Chief Manager Hadeo Area, South Jharkhand, Tehsil – Manendragarh, Dist. Korea (CG)
2. Regional Office
   Coal Mine Provident Fund Gupteshwar Jabalpur (M.P.)
3. Radha Bai alleged W/o Sevakram, R/o Khongapani, Through Mahatar Kewat, Peon, Pakka Dhoura, Khongapani, P.S. & Tehsil-Manendragarh, Dist. Korea (CG)
4. Gas Bai D/o Sakhi Ram, Alleged W/o Late Sevakram, R/o Chappan Dafai Khongapani, P.S. & Tehsil-Manendragarh, Dist: Korea (CG)
5. Jagatram S/o Bisun R/o Dond Nayapara, P.S. Kasdol, Dist: Raipur (CG)
6. Ku. Nisha, Daughter, Aged about 14 years.
7. Ku. Neetu, Daughter, Aged about 12 years.
8. Raj Kamal, Son, Aged about 10 years.
9. Raja, Son, Aged about 8 years

   Respondents 6 to 9 are minors through Natural guardian and next friend Smt. Gas Bai W/o Sevakram, All are R/o Chappan Dafai, Khongapani, Tehsil – Manendragarh, Dist: Koreas (CG)
10. Rakesh Kumar, S/o Late Sevakram, aged about 24 years
11. Ku. Usha, D/o. Late Sevakram,

29

Aged about 24 years

Respondent No. 10 & 11 are R/o Golai Dafai North Jharkhand, P.S. & Tehsil –Manendragarh,Dist: Korea (CG)-
(Respondent No. 10 & 11 are Plaintiff No.2 & 3)

Appeal under Section 96 of the Code of Civil Procedure

Present:-
Shri Vinit Pandey, counsel for the appellant.

ORAL ORDER
(Passed on 16th April, 2007)

Heard on admission.

2. The appellant is aggrieved by the judgment and decree dated 18.1.2007 passed in civil suit No.16-A/2006 by the Additional District Judge (FTC) Manendragarh, Distt: Korea (CG) whereby the suit for declaration for entitlement to receive the amount of gratuity, provident fund etc left by the deceased Sevak Ram, as the widow of Sevak Ram was dismissed.

3. Learned counsel for the appellant did not dispute that Sevak Ram was an employee of S.E.C.L who died on 18.5.2002. Sevak Ram had nominated the appellant Hem Bai to receive the amounts of gratuity, provident fund etc after his death. Since Radha Bai preferred an objection before the S.E.C.L on the ground that Hem Bai was not the legally married wife of Sevak Ram, the appellant herein was directed to file a civil suit for declaration of entitlement to the moneys left by Sevak Ram. Learned counsel for the appellant has also not disputed this fact during argument that Radha Bai was the legally married wife of Sevak Ram but contended that according to the custom prevalent in the community, a divorce had been obtained where after Hem Bai, the appellant herein had married Sevak Ram. Learned counsel for the appellant also did not dispute that in the plaint no specific allegations as to the date or even the year of divorce were made. Learned lower Court has recorded a finding that Radha Bai was the legally married wife of Sevak Ram. Since the factum of divorce has neither been specifically pleaded nor proved, the learned lower Court was wholly justified in dismissing the suit upon a proper appreciation of evidence on record.

(30)

4. In this view of the matter, I do not find any substance in this appeal which is devoid of any merit. Appeal is accordingly dismissed *in limine*..

5. In view of the above, I.A. No. 1/2007 for grant of stay also stands dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya